Washington Sprinkler, Inc. and Road Sprinkler Fitters Local Union 669, UA, AFL-CIO. Cases 5-CA-31925 and 5-CA-32016

September 21, 2005

# SUPPLEMENTAL DECISION AND ORDER BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On March 31, 2005, the National Labor Relations Board issued a Decision and Order<sup>1</sup> granting the General Counsel's Motion for Default Judgment and finding, inter alia, that the Respondent had violated Section 8(a)(5) and (1) of the Act by failing to furnish the Union with relevant and necessary information, and to adhere to the terms and conditions of its collective-bargaining agreement with the Union by, among other things, utilizing nonunion employees to perform work in the District of Columbia that is within the jurisdiction of the collective-bargaining agreement.

However, the Board denied the motion with respect to the allegation that the Respondent had violated Section 8(a)(5) "by failing to make fund payments as required by the collective-bargaining agreement." The Board stated that certain types of benefit funds are permissive subjects of bargaining for which no remedy would be warranted, and that there was no indication as to the nature of the funds involved in this case. The Board further stated that "[n]othing herein will require a hearing if, in the event of an appropriate amendment to the complaint, the Respondent again fails to answer, thereby making admissions that would permit the Board to find the alleged violation. In such circumstances, the General Counsel may renew the motion for default judgment with respect to the amended complaint allegations."

Subsequently, on May 2, 2005, the General Counsel issued an amendment to the consolidated complaint, alleging that since on or about January 19, 2004, the Respondent has failed to make fund payments to the following funds as required by the collective-bargaining agreement: National Automatic Sprinkler Industry Welfare Fund; National Automatic Sprinkler Industry Pension Fund; National Automatic Sprinkler Industry Education Fund; NASI-Local 669 Industry Education Fund; and Supplemental Pension Fund. The amendment to the consolidated complaint also alleged that these funds are

mandatory subjects of bargaining, and that the Respondent failed to make the required fund payments without affording the Union an opportunity to bargain and without the Union's consent. The Respondent again failed to file an answer.

Accordingly, on July 12, 2005, the Acting General Counsel filed a Renewed Motion for Default Judgment with the Board. On July 19, 2005, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response. The allegations in the renewed motion are therefore undisputed.

## Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the amendment to the consolidated complaint affirmatively stated that unless an answer was filed by May 16, 2005, all the allegations in the amendment to the consolidated complaint would be considered admitted, pursuant to a motion for default judgment or pursuant to the Board's earlier Decision and Order in this case. Further, the undisputed allegations in the Acting General Counsel's renewed motion disclose that the Region, by letter dated June 16, 2005, notified the Respondent that unless an answer was received by June 23, 2005, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file an answer, we grant the Acting General Counsel's Renewed Motion for Default Judgment.

On the entire record, the Board makes the following

### FINDINGS OF FACT

Consistent with the allegations in the amendment to the consolidated complaint, which have effectively been admitted by the Respondent's failure to file an answer, we find that since on or about January 19, 2004, the Respondent has failed to make fund payments required by the collective-bargaining agreement to (1) National Automatic Sprinkler Industry Welfare Fund; (2) National Automatic Sprinkler Industry Pension Fund; (3) National Automatic Sprinkler Industry Education Fund; (4) NASI-Local 669 Industry Education Fund; and (5) Supplemental Pension Fund.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects of bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union, without having afforded the Union an opportunity to bargain with the

<sup>&</sup>lt;sup>1</sup> 344 NLRB No. 45.

<sup>&</sup>lt;sup>2</sup> Id., slip op. at 2 fn 2.

<sup>&</sup>lt;sup>3</sup> Id. Member Liebman dissented, stating that because the Respondent had not contested the allegations of the complaint, she "would grant the General Counsel's motion in all respects, and would order the Respondent to make all the fund payments due under the agreement unless it shows in the compliance proceeding that any of the contributions are to benefit funds considered to be permissive subjects of bargaining for which no remedy would be warranted."

Respondent concerning this conduct, and without the Union's consent.

#### CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively with the limited exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by, inter alia, failing and refusing since January 19, 2004, to make fund payments to the National Automatic Sprinkler Industry Welfare Fund, National Automatic Sprinkler Industry Pension Fund, National Automatic Sprinkler Industry Education Fund, NASI-Local 669 Industry Education Fund, and Supplemental Pension Fund as required by the parties' collective-bargaining agreement, we shall order the Respondent to make all contractually required contributions that have not been made since that date, including any additional amounts due the funds in accordance with Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 6 (1979).4 The Respondent shall also reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981). Such amounts are to be computed in the manner set forth in Ogle Protection Service, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

## **ORDER**

The National Labor Relations Board orders that the Respondent, Washington Sprinkler, Inc., Washington, D.C., its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Refusing to recognize and bargain with Road Sprinkler Fitters Local Union 669, UA, AFL—CIO, as the limited exclusive collective-bargaining representative of the employees in the following appropriate unit:

- All Journeymen Sprinkler Fitters and Apprentices in the employ of the Employer, who are engaged in all work as set forth in Article 18 of the collectivebargaining agreement.
- (b) Failing to adhere to the terms and conditions of the 2000–2005 collective-bargaining agreement by, among other things, utilizing nonunion employees to perform work in the District of Columbia that is within the jurisdiction of the collective-bargaining agreement, and failing to make fund payments as required by the collective-bargaining agreement to the National Automatic Sprinkler Industry Welfare Fund; National Automatic Sprinkler Industry Pension Fund; National Automatic Sprinkler Industry Education Fund; NASI-Local 669 Industry Education Fund; and Supplemental Pension Fund.
- (c) Failing and refusing to furnish the Union with information that is relevant and necessary to the performance of its duties as the exclusive bargaining representative of the unit.
- (d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Recognize and, on request, bargain in good faith with the Union as the limited exclusive representative of the unit employees.
- (b) Comply with the terms and conditions of employment of the unit employees contained in the 2000–2005 collective-bargaining agreement.
- (c) Make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of its failure, since on or about January 19, 2004, to adhere to the provisions of the collective-bargaining agreement, including its failure to make the contractually-required fringe benefit fund contributions, with interest, as set forth in the remedy section of this decision.
- (d) Make all contractually-required contributions to the National Automatic Sprinkler Industry Welfare Fund; National Automatic Sprinkler Industry Pension Fund; National Automatic Sprinkler Industry Education Fund; NASI-Local 669 Industry Education Fund; and Supplemental Pension Fund that have not been made since about January 19, 2004, and reimburse unit employees for any expenses ensuing from its failure to make the required contributions, with interest, as set forth in the remedy section of this decision.
- (e) Furnish the Union with the information it requested on February 27, 2004.
- (f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, so-

<sup>&</sup>lt;sup>4</sup> To the extent that an employee has made personal contributions to a benefit or other fund that have been accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

cial security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

- (g) Within 14 days after service by the Region, post at its facility in Washington, D.C., copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 19, 2004.
- (h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

## **APPENDIX**

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to recognize and bargain with Road Sprinkler Fitters Local Union, 669, UA, AFL-CIO,

as the limited exclusive collective-bargaining representative of the employees in the following appropriate unit:

All Journeymen Sprinkler Fitters and Apprentices in our employ, who are engaged in all work as set forth in Article 18 of the collective-bargaining agreement.

WE WILL NOT fail to adhere to the terms and conditions of the 2000–2005 collective-bargaining agreement by, among other things, utilizing nonunion employees to perform work in the District of Columbia that is within the jurisdiction of the collective-bargaining agreement, and failing to make fund payments as required by the collective-bargaining agreement to the National Automatic Sprinkler Industry Welfare Fund; National Automatic Sprinkler Industry Pension Fund; National Automatic Sprinkler Industry Education Fund; NASI-Local 669 Industry Education Fund; and Supplemental Pension Fund.

WE WILL NOT fail and refuse to furnish the Union with information that is relevant and necessary to the performance of its duties as the exclusive bargaining representative of the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain in good faith with the Union as the limited exclusive representative of the unit employees.

WE WILL comply with the terms and conditions of employment of the unit employees contained in the 2000–2005 collective-bargaining agreement.

WE WILL make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of our failure, since on or about January 19, 2004, to adhere to the provisions of the collective-bargaining agreement, including our failure to make the contractually-required fringe benefit fund contributions, with interest.

WE WILL make all contractually-required contributions to the National Automatic Sprinkler Industry Welfare Fund; National Automatic Sprinkler Industry Pension Fund; National Automatic Sprinkler Industry Education Fund; NASI-Local 669 Industry Education Fund; and Supplemental Pension Fund that have not been made since about January 19, 2004, and reimburse unit employees for any expenses ensuing from our failure to make the required contributions, with interest.

WE WILL furnish the Union with the information it requested on February 27, 2004.

WASHINGTON SPRINKLER, INC.

<sup>&</sup>lt;sup>5</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."